UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,537	01/30/2004	Ruth Schaefer Gayde	LUTZ 2 00240	6580

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ART UNIT	PAPER NUMBER
2132	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/768,537	GAYDE ET AL.
	Examiner	Art Unit	
	Cordelia Kane	2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *30 January 2004*.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-26* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-26* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/30/04*.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

1.   This action is responsive to the non-provisional application filed on January 30,

2004. Claims 1 – 26 are pending. Claims 1, 5, 12, 16, and 23 – 26 are independent.

Claim Objections

2.   Claims 5, 16 and 24 are objected to because of the following informalities: the

claims recite releasing a speech path when no speech path was ever established.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

4.   Claims 12 – 18, 20 – 22, 25 and 26 are rejected under 35 U.S.C. 101 because

the claimed invention is directed to non-statutory subject matter. In the specification

applicants teaches that the means for may be software (page 7, paragraph 27, page 9,

paragraph 31). Software does not fall into one of the four statutory categories and is

therefore not statutory.

Claim Rejections - 35 USC § 112

5.   Claims 1, 5, 12, 16, and 23 – 26 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which applicant regards as the invention.

6.   Claims 1, 5, 12, 16 and 23 – 26 refer to authenticating both the user and the

trusted entity based on the user data. It is unclear how to authenticate a trusted entity

using user data.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8.   Claims 1, 12, 23 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated

by Paul Oommen's US Patent 6,993,328 B1. Referring to claims 1, 12, 23 and 25,

Oommen teaches:

   a.   Signaling a trusted entity to initiate a repair session by a user entity

requiring repair (column 4, lines 63-65).

   b.   Obtaining user data on the user entity by the trusted entity (column 4, lines

14-20).

   c.   Authenticating identity of the trusted entity and the user entity based on

the user data (column 4, lines 34-37).

   d.   Establishing a speech and data path between the user entity and the

trusted entity (column 4, lines 22-25).

    e.   Performing diagnostics on the user entity (column 5, lines 60-62).

    f.   Obtaining repair data based on the diagnostics , and repairing the user

entity based on the repair data (column 6, lines 6-9).

    g.   Releasing the data and speech path (column 6, lines 6-9). Releasing the

path is understood once the repair is complete.

9.   Referring to claims 2, and 13, Oommen teaches wherein the signaling comprises

manipulating one of a soft key or a hard key on the user entity (column 4 line 65-column

5, line 1). Sending the objects to the mobile agents functions as manipulating a soft key.

10.   Referring to claims 4, and 15, Oommen teaches that obtaining repair data

comprises accessing a database (column 4, lines 39-41).

11.   Referring to claims 5, 16, 24 and 26, Oommen teaches:

    h.   Signaling a trusted entity to initiate an update session by a user entity

(column 4, lines 63-65).

    i.   Obtaining user data on the user entity by the trusted entity (column 4, lines

14-20).

    j.   Authenticating identity of the trusted entity and the user entity for the

update session (column 4, lines 34-37).

    k.   Establishing a data path between the user entity and the trusted entity

(column 4, lines 22-25).

    l.   Obtaining update data (column 4, lines 39-41).

    m.   Downloading update data (column 5, lines 14-16).

    n.   Executing the update data (column 4, lines 58-59).

o.   Determine whether other update data should be downloaded (column 5,

lines 12-13).

p.   Restoring the data on the user entity (column 4, lines 58-59).

q.   Releasing the data path (column 6, lines 6-9). Releasing the path is

understood once the download is complete.

12.   Referring to claims 6 and 17, Oommen teaches establishing a speech path

(column 4, lines 22-25). A data path may include a speech path.

13.   Referring to claims 7 and 18, Oommen teaches that the signaling comprises

manipulating one of a soft key or a hard key on the user entity (column 4 line 65-column

5, line 1). Sending the objects to the mobile agents functions as manipulating a soft key.

14.   Referring to claims 10, and 21, Oommen teaches that obtaining update data

comprises accessing a database (column 4, lines 39-41).

Claim Rejections - 35 USC § 103

15.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

16.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.

    2.   Ascertaining the differences between the prior art and the claims at issue.
    3.   Resolving the level of ordinary skill in the pertinent art.
    4.   Considering objective evidence present in the application indicating
        obviousness or nonobviousness.

17.   Claims 3, 9, 14, and 20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Oommen as applied to claims 1, 5, 12, and 16 above, and further in

view of Kunio Kashino et al's US Publication 2001/0049664 A1. Oommen discloses all

the limitations of the parent claims. Oommen does not explicitly disclose obtaining the

user data from a database. However, Kashino discloses after receiving the user ID

accessing a database to authenticate the user (page 11, paragraph 109).

18.   Oommen and Kashino are analogous art because they are from the problem-

solving area, entity authentication. At the time of the invention, it would have been

obvious to one of ordinary skill in the art, having the teachings of Oommen and Kashino

before him or her, to modify Oommen to include the registration database of Kashino.

The motivation for doing so would have been to store information related to the user to

offer certain services to specific users only, as well as to authenticate them (page 10,

paragraph 103).

19.   Claims 8, 11, 19, and 22 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Oommen as applied to claims 5 and 16 above, and further in view of

Kirk Salomon's US Publication 2003/0041125 A1. Oommen discloses all the limitations

of the parent claims. Oommen does not explicitly disclose an application server

signaling the trusted entity, and providing access to the update data. However, Salomon

discloses that the application server program causes the local application server

computers to update the wireless application software programs on the wireless

application server computers (page 1, paragraph 9).

20.   Oommen and Salomon are analogous art because they are from the same field

of endeavor, management of wireless systems. At the time of the invention, it would

have been obvious to one of ordinary skill in the art, having the teachings of Oommen

and Salomon before him or her, to modify Oommen to include the application server of

Salomon. The motivation for doing so would have been to have a flexible wireless

system that is quickly and easily capable of distributing different wireless software

applications to different remote sites (page 1, paragraph 3).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Cordelia Kane whose telephone number is 571-272-

7771. The examiner can normally be reached on Monday - Thursday 8:00 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CPK

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/Benjamin Lanier/
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